

1982 WL 189241 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 6, 1982

***1 Re: Freedom of Information Act and Confidentiality of Company Specific Information**

Mr. David M. Logeman
Research Administrator
Office of the Governor
Division of Energy Resources
1122 Lady Street
4th Floor West
Columbia, SC 29201

Dear Mr. Logeman:

Your letter of March 18, 1982, concerning confidentiality of energy information in the South Carolina Freedom of Information Act has been referred to me for review. You indicate that the Department of Energy will release company specific data which is proprietary in nature to the state providing the state can insure confidentiality. You asked if, under the Freedom of Information Act, the Governor's Office may maintain the required confidentiality.

As you know, the South Carolina Freedom of Information Act applies to any 'public body' under Section 30-4-20(a). You may wish to look at the definition, but I believe that it is broad enough to encompass the Office of the Governor, although that Office is not specifically mentioned. The definition does include any agency supported in whole or in part by public funds or expending public funds and I believe that the Governor's Office would fall within the parameters intended by this definition. The Freedom of Information Act further mandates the release of any public record in the possession of a public body unless that record is exempted from disclosure under Section 30-4-40. A public record, under Section 30-4-20(c), is defined very broadly and all items, irrespective of form which are in the possession of a public body, are available to the public unless those records are exempted by law or closed to the public under the provisions of the exemption, which shall be mentioned momentarily, or unless the governmental body takes a three quarters vote of its membership concluding that the public interest is best served by not disclosing any requested record. Section 30-4-40(a)(1) states that trade secrets are exempt from disclosure. Trade secrets are further defined as ' . . . unpatented, secret, commercially valuable plans, appliances, formulae, or processes which are used for the making, preparing, compounding, treating or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential . . . ' Section 30-4-40(a)(2) exempts information of a personal nature where public disclosure would constitute an unreasonable invasion of personal privacy and this is stated to include information as to gross receipts contained in applications for business licenses. Since you do not define the type of data which the Department of Energy may release under a guarantee of confidentiality, I have no means of discerning whether or not the cited data would fit within the parameters of these exemptions, but unless the company specific information data could be constrained to fit within these two exemptions, then in all likelihood, the information would be available under the Freedom of Information Act, unless the Governor wished to take a stand upon request that the public interest would not be served by disclosing the data. This stand, of course, would have to be then defended in court with the reasons for this stand being made public.

***2** I shall be glad to speak with you further at your convenience. Please do not hesitate to contact me.

Sincerely,

Judith Evans Finuf
Assistant Attorney General

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